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ABSTRACT

Discipline of handicapped students is the topic of the lead article in this publication. The author first reviews recent cases regarding expulsion of handicapped students, including "Kaelin v. Grubbs," a 1982 case finding that the same due process procedures that apply to changing the educational placement for handicapped students must also apply to a proposed expulsion. The author then describes two proposed regulations under Public Law 94-142 that in his opinion do not provide true policy guidelines for schools. He then offers his suggestions for fashioning a policy that addresses the overall problem of student discipline and placement of handicapped students based on the premise that a good discipline policy is applicable uniformly to all students--even handicapped. He suggests that a student who is a candidate for a suspension of more than 3 days should be viewed as a child in need of assessment and possible placement. Minor suspension policies are also reviewed. The remainder of the publication consists of three short articles on three separate topics: the trend toward "get tough" district discipline policies, a method for raising school system morale by recognizing those who contribute positively to schools, and suggestions for school board policies on student fundraising events. (Author/JM)

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Updating SCHOOL BOARD POLICIES

Volume 13/Number 10/November 1982

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By David A. Splitt

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Don't handicap your discipline policies

By David A. Split

Discipline of handicapped students is becoming one of the most perplexing legal and policy questions to face school systems. Can handicapped students be suspended for violations of school rules? Is it legally permissible to expel a handicapped student for bad behavior? What is the relationship between disciplinary and placement procedures mandated for handicapped students under federal law and regulations?

The legal dilemma is like "trying to untangle the knotty difference between 'placement' and 'displacement,'" says a prominent school lawyer. Although several lower courts have addressed expulsion of special education students, it was not until last summer that a higher court—the 6th Circuit U.S. Court of Appeals—rendered a decision, in a Kentucky lawsuit, which, although not the final word on the subject, may enable school systems to approach policy making with less legal nit-picking and more common sense.

Following the legal rationale of an earlier (1981) 5th Circuit decision in *S-1 v. Turlington*, the appellate panel in the Kentucky case of *Kaelin* v. *Grubbs* held that the same due process procedures that apply to changing the educational placement for handicapped students also must apply to a proposed expulsion.

The court's conclusion, for all the ado it caused, wasn't all that surprising. The District of Columbia Public School System was the first, in the 1971 *Mills* case, to be ordered by a federal judge to provide assessment, placement, and due process hearings for all handicapped students. Also known as the "Waddy Decree" after the late Judge Joseph Waddy, this was not *just* a special education case.

In addition to ruling that handicapped students may not be excluded from a free public school education by admission standards that prohibited their attendance, Judge Waddy ordered that *no student* may be suspended for more than three days, or expelled for any reason, without notice of the grounds for the action and an opportunity for a hearing before an impartial hearing officer. The court also held that students whose ability to receive an adequate education is impaired by an emotional or physical handicap also are entitled to an assessment of their needs and placement in a program tailored to meet their individual educational needs. A student who contests the placement determination of the school system also is entitled to a hearing under the *Mills* order.

If the language of the ruling in the *Mills* case sounds vaguely similar to the provisions of Public Law 94-142, it is because Congress, which does its business in the District of Columbia, used Judge Waddy's order as a model for the federal statute.

Expulsion eliminated

One result of the D.C. Public Schools' policy under the *Mills* decision: Expulsion of students between 7 and 16 years of age (i.e., those covered by the D.C. compulsory attendance law) has been virtually eliminated. The decision that throwing students out of school permanently is an unacceptable form of "discipline" simplifies the problems relating to due process and placement. Since the student no longer is subject to total exclusion from the public education system, the courts are not placed in the awkward, if not impossible, position of trying to fashion standards for allowing the school system to close its doors to a student.

Have the fears that seem to plague many school systems—fears of incorrigible students wreaking havoc in the classroom with no way to banish them—been realized in the D.C. Public Schools because of its elimination of expulsion? Hardly. Where problems exist, they usually can be traced to lack of proper implementation of the available policy and procedures. The legal vulnerability of the school system in dealing with disciplinary problems among both "normal" and "exceptional" students has been reduced by the absence of a need for hearing officers, placement specialists, administrators, and the board to face the "ultimate decision" whether to expel any student.

A question of placement

In cases that have addressed the permissibility of expelling a handicapped student, the issues range from whether the school board had determined the student to be guilty of misconduct, to whether the miscreance somehow was caused by the handicapping condition. The latter question was addressed pointedly by the appellate court in *Kaelin v. Grubbs*, and seems to be the most prominent issue before the courts in the past few years. The ironic ruling of the 6th Circuit in this case is that a student cannot be expelled without following the due process procedures for a change in educational place-

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ment. The issue is being framed in terms of the student's placement, and not with respect to the question of expulsion.

The courts seem to be saying that it is important to determine whether a student's misbehavior is related to his special education problem. If so, the child presumably must be "treated" rather than "punished." The 5th Circuit in *S-1* v. *Turlington* ordered that "before a handicapped child can be expelled, a trained and knowledgeable group of persons must determine whether the student's misconduct bears a relationship to his handicapping condition."

Common sense should dictate that changing a student's placement from the classroom to the street is not, in fact, a change in placement at all. If anything, expulsion is an "absence of placement." In any case, for a school board interested in making good policy, the issue is only complicated by an analysis of recent court cases.

The U.S. Department of Education (ED) has entered the fray with these two proposed regulations under Public Law 94-142, which appear to parrot the vague pronouncements of the federal courts and do nothing more to provide policy guidelines for public schools:

1. School systems may use the same procedures applicable for "non-handicapped children" to impose a "disciplinary sanction" on a handicapped child "where a hearing is not required" by law or board policy.

2. In any case where a hearing is required by law or policy before a disciplinary sanction may be imposed, the school system must determine "whether the child's behavior was caused by the "child's handicapping condition" (the determination can be made "before, at, or after the hearing required by law or policy," and "in making this determination, the [school board] shall involve persons who are familiar with the child and with the behaviors associated with the handicapping condition.")

Uniform application of policy

These proposed regulations hardly enlighten school systems. Instead of looking to the federal government for guidance, you might try to fashion a policy that addresses the overall problem of student discipline and placement of handicapped students. The premise: A good discipline policy is applicable uniformly to *all* students, including those with some physical, mental, or emotional problem.

The first policy issue: Will your school system allow expulsion at all? In most cases where charges are serious enough to warrant expulsion, they also are serious enough to involve the juvenile authorities—it's likely you can let the juvenile court send your tenth grade drug pusher up the river.

Do not make the mistake of creating a separate discipline and assessment/placement system for students who have been identified, labeled, and categorized as either "handicapped" or "non-handicapped." Set up one system that covers all students, all possible reasons for misbehavior, and is flexible enough to provide all available remedies for each situation. While such a system may sound more complicated than a separate procedure for handicapped students, it really is not. Indeed, it will provide you with a great deal more ammunition in court if your due process procedures are challenged.

Finally, look at each student who behaves badly enough to be considered a candidate for a major suspension (more than three days)—especially if the misbehavior is repeated often enough to give the student a reputation as a disciplinary "problem"—as a child in need of assessment and possible placement. This approach is especially valuable in the elementary grades. In more than one instance, a student who has been punished repeatedly for "acting up" in class is discovered to be suffering from a learning disability, a physical problem such as a hearing deficiency or poor eyesight, or an emotional disorder. With early identification and placement, this kind of "discipline" problem can be helped in the way afforded a blind, paraplegic, or retarded student.

Exclusion procedures

In the case of minor punishment for misbehavior (exclusion from class or a school activity for a brief period), informal procedures are sufficient for all students. The board policy on exclusions should identify *who* can decide to exclude a student (usually the involved teacher, coach, or activity sponsor), and stipulate that the decision is subject to review by the principal or assistant principal. A decision to exclude a student from more than one activity, or from all activities for a short period of time, should be reserved to the principal or assistant principal on the recommendation of one or more teachers.

Informal exclusion procedures should ensure that the student is given an informal "exclusion conference" with the school official making the decision, which includes oral notice of the grounds for exclusion; an explanation of the evidence or facts on which the school official has determined that the student has committed a serious offense; and an opportunity for the student to present his version of the facts, or explain the events or actions upon which the exclusion is based.

The informal conference should precede or closely follow the exclusion. It is *not* necessary to allow a student faced with this minor disciplinary action to be represented by counsel or to confront witnesses, and no permanent record of the action should be kept.

Minor suspension procedures

For minor suspensions (one to three days), procedures are similar to those

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used in the informal class or activity exclusion process. It is important for board policy to specify *who* can take the action—usually the principal on the recommendation of a staff member—and provide for the same informal notice and conference procedures. The parent or guardian should be notified before any suspension is effected, and may be allowed to participate in the informal conference. Sometimes school officials hold the pre-suspension conference with the student and meet separately with parents during or after the suspension is effected.

Never make the student's return to school after a *minor* suspension contingent on a meeting with the parents. Administrators should know that if the parents don't or can't show up before the suspension is over, the student is to be readmitted. In no instance should a board policy allow any "indefinite" suspension of a student.

Uniform suspension policy

Major suspensions (more than three days) should be treated as serious events. The decision should be made only by the principal or assistant principal. Procedures are similar to those used for minor suspensions with several important additions. Along with the informal suspension conference with the student, the parent should be given *written* notice of:

- the proposed length of suspension;
- the specific grounds for the suspension, including a detailed description of the facts, events, and actions that led to it;
- a statement that classroom assignments will be given to the student for completion during the period of suspension;
- information about the right of the student/parent to request and receive a hearing before an impartial hearing officer, to be represented by counsel, to examine the student's records and the official report of the incident leading to the suspension, to present testimony at the hearing (including calling any involved school staff), and the right to confront and cross-examine witnesses; and
- a statement explaining that the student/parent may request and receive, without charge, an educational and psychological assessment and evaluation of the student, which may form the basis of a recommendation for an alternative educational placement or supplemental educational assistance.

The last part of the notice to parents is the key to a uniform major suspension policy for all students. A student whose behavior is so bad that suspension for a significant length of time (even for the remainder of the semester) is warranted should be given the opportunity to request and receive an evaluation of the same type used to determine placements for those students identified as having educational problems that do not necessarily result in disciplinary action.

If a student already is in a special education placement, the process allows for further assessment that can help to establish a relationship between the behavior problems and the handicapping condition, or result in a proposed change in placement. Thus, unlike the process that treats handicapped students differently from other students, this procedure provides an opportunity in all cases for evaluating problems that may be affecting the student's behavior, giving school officials and parents a second look at the placement of handicapped students who are experiencing behavior problems.

Expulsion as a remedy

For those school boards that decide to keep expulsion among the remedies available to administrators to handle disciplinary problems, the same procedures described for major suspensions can be used for the proposed expulsion of *any* student. The same process, if followed prior to the actual suspension or expulsion of either a handicapped or non-handicapped student, will provide all of the due process safeguards *and* assessment, evaluation, and placement (or change of placement) procedures needed to satisfy any court or the federal government.

If the parent requests assessment and evaluation of the student, he should be notified in writing of the procedures for challenging the findings and recommendations of that process, and the 94-142 hearing process should be followed if a challenge is presented.

And what if school officials believe the student presents an actual danger to others and should be removed immediately from the classroom? Board policy should stipulate that dangerous students can be given immediate minor suspensions pending a possible hearing on a major suspension, or that the student can be temporarily excluded from classes and activities, without being sent home, or a combination of both. In each case where suspension is pursued, the due process and assessment procedures, if requested, should be expedited.

Early identification

One final thought. Many severe disciplinary problems involving handicapped students and students who may have problems that could lead to their placement in a special education program can be caught early. Your board should institute a policy on the periodic reassessment of handicapped students, and include in its policy on identification and assessment a mandate for school officials to find problems *early* and deal with them before they explode into major breaches of discipline. ■

Other related policies

When developing your student discipline policy, other policies should conform with this statement. These include:

Student conduct (code JFC).

If suspensions result in specific disciplinary measures, be sure that those listed in this policy agree with those in your discipline policy.

Programs for Handicapped Students (code IGBA).

Placement of handicapped students, their individual education plans (IEP), and placement hearings should be spelled out here. Your policy on discipline should not contradict these requirements.

Assignment of Students to Classes (code JECD).

Problem students may require special placement in behavioral or rehabilitative classes.

Trends

Schools responding to public's No. 1 concern

Lack of discipline once more is the public's top concern with public schools, according to the latest Gallup poll on education.

School boards are responding with discipline policies to support a new "get tough" attitude by administrators for coping with wayward student behavior. Suspension no longer is "automatic," nor an easy way for a student to get out of school for a few days. Stiffer penalties for misbehavior, including in-house suspension, behavior contracts, and attendance at discipline centers, now confront the refractory student.

Dress codes also are making a comeback. The National Center for Education Statistics found recently that at least half the high schools it surveyed had a dress code. Attire that may be acceptable for recreation—jogging shorts, bikini-style tops, tee-shirts with slogans—is not appropriate for the classroom.

Expulsion, once viewed by some administrators as a means of ridding schools of students with chronic discipline problems, now often is viewed as a punishment of last resort. In the long run, say school leaders, expulsion is of no advantage to the student or to society.

A program that works

For a discipline policy (and its accompanying regulations) to work, school officials agree that it must specify penalties for each infraction, and be applied consistently. The Omaha school board has adopted a new student discipline code that insists on consistent application of penalties for each offense. Says Asst. Supt. Rene Hlavac: "At the building level, administrators had been inconsistent with the punishment they'd mete out for a particular offense. There were inconsistencies among the schools, and, even at the board level, there was no specific structure for the committee which heard appeals." The new discipline policy spells out specific punishment for 11 types of offenses, and school administrators are provided with guidelines in levying punishment for 15 others.

Better student behavior and classroom management also result when "teachers communicate consistent expectations to students and follow the same plan when students misbehave," says Principal Ronald Sinclair of the Weisenborn Junior High School in Dayton, Ohio. Teachers are being held more accountable for controlling their classes, with classroom management often one area included in a teacher's evaluation. Says Lewis C. Benjamin, Jr., supervisor of child welfare and attendance of the Lafayette (La.) Public Schools: "When teachers manage their classes better, and schools have better dialogue with students, students are better behaved."

Parental cooperation also is a big plus in getting a discipline program to work. In Tacoma (Wash.), parents have welcomed in-school suspension of student offenders. Explains Supt. Del Cross: "If both parents work, they don't have to worry that their child is out on the street or sitting in front of the television watching soap operas, just because he's been suspended."

In Tacoma, as in most school systems that have in-school suspension, students are required to spend the day in a supervised classroom where they are not allowed to talk, and must complete assignments provided by their regular classroom teachers. They are restricted from leaving the classroom and are required to lunch in the room without contact with other students. An entrance and exit interview is conducted to help the student understand and deal with his behavior problems.

A learning process

Omaha's policy sees discipline not just as a method to punish students who don't obey rules, but also as an opportunity to encourage a student's emotional growth. For this reason, certain offenses—such as use or possession of alcohol or drugs—do not result in automatic expulsion. Instead, students attend a special center for instruction and drug rehabilitation. After a period of time, students at the center are evaluated by trained staff members who may assign them to their regular school or to a government agency for additional evaluation and rehabilitation.

Similarly, students found using drugs in the Lafayette schools are sent to the local substance abuse center for rehabilitation and education. Readmission to school is then determined by the center.

Fewer problems anticipated

With tougher discipline policies and regulations, most school administrators anticipate fewer disciplinary problems in the next few years. Expulsions in the Omaha schools (enrollment, 43,000) are down to 100 per semester. In Lafayette, Supervisor Benjamin says most student discipline problems are worked out before expulsion is considered. Says Supt. Cross of Tacoma: "There are fewer suspensions than there were five years ago. In general, an attitude of cooperation prevails among students." ■

Reward good students

Improved attendance and fewer behavior problems have resulted at Joliet (Ill.) Township High School with an incentive program that rewards good behavior and 95 percent attendance or better.

Students who meet those requirements receive a Student Privilege Card which entitles them to choose where to spend their noncless time. Although board policy restricts students to campus during the school day, they no longer have to attend mandatory study halls.

Other privileges awarded card holders include the opportunity to help with special events like open house or visitation days.

Tips 'n Techniques

Even in tough times, you can make things better

Are test scores down? Budgets low? Buildings being closed? Staff being laid off?

If the morale in your school system has plummeted, a sincere—and inexpensive—series of "thank you" events to acknowledge your school system's successes may raise it.

Who to recognize?

Awards ceremonies need not be limited to outstanding student scholars and athletes, or to students who have contributed to the well-being of the school community. Teachers, who have developed innovative and successful curricular activities, bus drivers with exceptional safety records, maintenance personnel who have kept the general plant fuel efficient—all deserve a special "thank you" from the board. By performing their jobs efficiently and with creativity, they are helping the board and administration attain school system goals. Citizen volunteers who donate their time and energy also deserve to be recognized and encouraged to continue their good work.

How to recognize?

How your school system shows its appreciation need not be elaborate or expensive. A resolution placed in the board meeting minutes may be enough. Letters or certificates from the superintendent or the board, also are appropriate forms of commendation and may be presented at a public meeting if additional recognition is warranted. An engraved plaque is a little more expensive but may signify enduring service a person or group has performed for the school system.

Here are other types of recognition with higher—though not exorbitant—price tags that school systems have found worthwhile:

Ceremonial dinners. Each spring, the East Windsor (N.J.) school board, invites hundreds of its school volunteers to a gala to show appreciation for the work the volunteers perform. The board considers this a "small price to pay" for the services the schools receive.

Incentive programs for staff. Houston's Spring Independent School District provides a program to "encourage creative thinking and outstanding performance." A total of $82,000 is awarded in five categories, including "Outstanding Teacher Performance" and "Creative Problem Solving."

Recognition days. They need not be just for teachers. Your central office staff, your cafeteria workers, and your teacher aides provide services that shouldn't go unnoticed. Setting aside a special day for them, and providing notes of thanks, are good morale boosters.

A special coordinator—a teacher, principal, or your public information coordinator—will be needed to plan these events. While your recognition program is meant to thank those who contribute to your school system, don't let the community lose sight of your positive activities, especially if the recipients of the honors have been attacking school system problems. Publicize these events in the local press to show the board hasn't lost sight—and neither should the community--of your school system's attributes.

Policies reflect pride

Your recognition programs reflect pride in your school system and in those who contribute to it, and so should your policies. If board practice is to recognize individuals or organizations with plaques, citations, or ceremonial dinners, then your policy manual should include a statement on recognition of accomplishment. It also should include a statement on student awards and scholarships to reflect current practice.

In developing policies and programs in these areas, the board should keep in mind the following:

Reflect your goals and objectives. Any award or program in conflict with the school board's basic philosophy should not be approved.

Establish criteria for recognition. If the board honored everyone who did something nice for the school system, it would never have time to deal with its responsibilities. Have the superintendent develop criteria for appropriate forms of service recognition.

Don't promise more than you can deliver. No matter how much you want to show your appreciation, if citations and letters of commendation are all you can afford, don't promise ceremonial dinners or monetary awards. ■

Mark these dates

If you missed NSBA's policy and personnel management workshops last month, now is the time to mark your calendar with these dates—April 5-8—for a repeat in Chicago of these two valuable presentations.

Receive practical advice at the School Personnel Management Workshop, April 5-6 on how to manage your personnel wisely or make the most of this valuable resource.

Join us April 7-8 for the Policy Management Workshop to learn how to compile and keep up to date your school system's policy manual.

At each workshop you'll receive specially developed learning materials, practical instruction, and individual consultation.

For more information, write or call Nancy Dickinson at NSBA (202/337-7666).

Policy Adviser

To ensure that student fund-raising events are constructive educationally and socially, what are some of the criteria that should be included in board policy?—*Superintendent, New York*

Before establishing any criteria for student fund-raising projects, check state law for any limitations it may provide. The items board policy may cover include:

Administrative approval. The building principal should approve the activity before it is announced or initiated.

Specific purpose. A fund-raising project should be considered only for a designated purpose.

Voluntary participation. Participation by students and faculty should be entirely voluntary. Projects must not discriminate against students who can't or won't contribute.

Endorsement. Unless specifically authorized by the board, a fund-raising event should not imply the endorsement of the board for a specific product, commercial establishment, or other nonschool agency.

Student safety. If door-to-door solicitations are to be made by students, the age of the student and his welfare must be considered. Door-to-door solicitations may be limited to high school students and restricted in distance to the school's immediate attendance area.

Community participation. Programs should encourage bringing students, parents, and other citizens to the school. This can include such activities as dinners, carnivals, and dramatic or musical productions.

How strict can our dress code be? —*Superintendent, Wyoming*

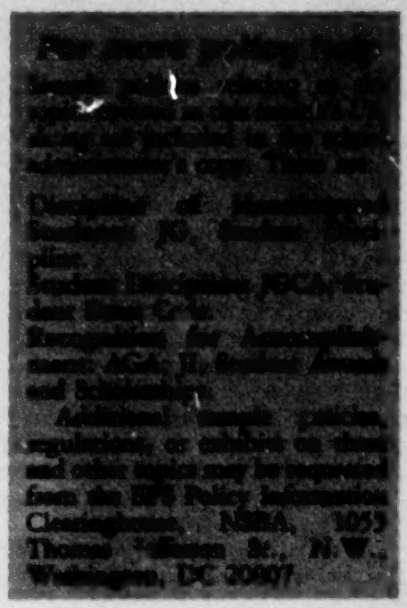
The strictness of your dress code may be determined by your community standards toward dress, as well as your concern for the safety and well-being of your students and school property.

The U.S. Department of Education basically has supported the position that local school systems should have the final say in dress code matters. Therefore, if your community supports your opinion that tee-shirts, jogging shorts, and baseball caps are inappropriate to wear to school, then your dress code can spell that out.

For safety reasons you may also prohibit other types of attire including jewelry which may be unsafe in gym or machine shops. Extreme caution should also be taken in science labs where certain types of clothing could cause a serious accident.

Protecting school property may also be one of your concerns. Shoes with cleats are fine for the football field, but do great damage to school floors.

Students may not be the only ones affected by a school dress code. A federal appeals court in Louisiana recently ruled that school staff were also required to follow the student dress code that banned beards. The beard ban, the court said, was in keeping with the board's interest in "teaching hygiene, instilling discipline, asserting authority, and compelling uniformity." ■



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